

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

JUDY ANN SMITH,)	
)	No. CV-07-380-JPH
Plaintiff,)	
)	ORDER GRANTING DEFENDANT'S
v.)	MOTION FOR SUMMARY JUDGMENT
)	
MICHAEL J. ASTRUE, Commissioner)	
of Social Security,)	
)	
Defendant.)	
)	
)	

BEFORE THE COURT are cross-motions for summary judgment noted for hearing without oral argument on July 7, 2007. (Ct. Rec. 12, 15). Attorney Lora Lee Stover represents Plaintiff; Special Assistant United States Attorney Leisa A. Wolf represents the Commissioner of Social Security ("Commissioner"). (Ct. Rec. 23). The parties have consented to proceed before a magistrate judge. (Ct. Rec. 3.) After reviewing the administrative record and the briefs filed by the parties, the court **GRANTS** Defendant's Motion for Summary Judgment (Ct. Rec. 15) and **DENIES** Plaintiff's Motion for Summary Judgment (Ct. Rec. 12.)

JURISDICTION

Plaintiff filed applications for Disability Insurance Benefits ("DIB") on October 26, 2004, and for SSI on November 2,

1 2004, alleging an onset date of June 1, 1999. (Tr. 56-60, 276-
2 280.) The applications were denied initially and on
3 reconsideration. (Tr. 53-55, 282-285; 49-50, 287-288.)
4 Administrative Law Judge (ALJ) Richard Say held a hearing on March
5 6, 2007. (Tr. 303-336.) Plaintiff, lay witness Janet Thomas, and
6 vocational expert Tom Moreland testified. On April 5, 2007, the
7 ALJ issued a decision finding that plaintiff was not disabled.
8 (Tr. 19-27.) The Appeals Council denied a request for review on
9 October 17, 2007. (Tr. 5-8.) Therefore, the ALJ's decision
10 became the final decision of the Commissioner, which is appealable
11 to the district court pursuant to 42 U.S.C. § 405(g). Plaintiff
12 filed this action for judicial review pursuant to 42 U.S.C. §
13 405(g) on December 3, 2007. (Ct. Rec. 1.)

14 **STATEMENT OF FACTS**

15 The facts have been presented in the administrative hearing
16 transcript, the ALJ's decision, the briefs of both Plaintiff and
17 the Commissioner, and will only be summarized here.

18 Plaintiff was 60 years old on the date of the hearing. (Tr.
19 334.) She has a high school education and about two years of
20 college. (68, 334.) Plaintiff was self-employed for ten years as
21 the owner and operator of a photo finishing shop. (Tr. 307.) She
22 alleges disability as of June 1, 1999, due to diabetes,
23 neuropathy, vision problems, obesity, thyroid problems, and mental
24 impairments (an inability to handle stress). (Tr. 62, 307-308.)

25 **SEQUENTIAL EVALUATION PROCESS**

26 The Social Security Act (the "Act") defines "disability" as
27 the "inability to engage in any substantial gainful activity by
28 reason of any medically determinable physical or mental impairment

1 which can be expected to result in death or which has lasted or
2 can be expected to last for a continuous period of not less than
3 twelve months." 42 U.S.C. §§ 423(d)(1)(A), 1382c(a)(3)(A). The
4 Act also provides that a Plaintiff shall be determined to be under
5 a disability only if any impairments are of such severity that a
6 Plaintiff is not only unable to do previous work but cannot,
7 considering Plaintiff's age, education and work experiences,
8 engage in any other substantial gainful work which exists in the
9 national economy. 42 U.S.C. §§ 423(d)(2)(A), 1382c(a)(3)(B).
10 Thus, the definition of disability consists of both medical and
11 vocational components. *Edlund v. Massanari*, 253 F.3d 1152, 1156
12 (9th Cir. 2001).

13 The Commissioner has established a five-step sequential
14 evaluation process for determining whether a person is disabled.
15 20 C.F.R. §§ 404.1520, 416.920. Step one determines if the person
16 is engaged in substantial gainful activities. If so, benefits are
17 denied. 20 C.F.R. §§ 404.1520(a)(4)(i), 416.920(a)(4)(i). If
18 not, the decision maker proceeds to step two, which determines
19 whether Plaintiff has a medically severe impairment or combination
20 of impairments. 20 C.F.R. §§ 404.1520(a)(4)(ii),
21 416.920(a)(4)(ii).

22 If Plaintiff does not have a severe impairment or combination
23 of impairments, the disability claim is denied. If the impairment
24 is severe, the evaluation proceeds to the third step, which
25 compares Plaintiff's impairment with a number of listed
26 impairments acknowledged by the Commissioner to be so severe as to
27 preclude substantial gainful activity. 20 C.F.R. §§
28 404.1520(a)(4)(ii), 416.920(a)(4)(ii); 20 C.F.R. § 404 Subpt. P

1 App. 1. If the impairment meets or equals one of the listed
2 impairments, Plaintiff is conclusively presumed to be disabled.
3 If the impairment is not one conclusively presumed to be
4 disabling, the evaluation proceeds to the fourth step, which
5 determines whether the impairment prevents Plaintiff from
6 performing work which was performed in the past. If a Plaintiff
7 is able to perform previous work, that Plaintiff is deemed not
8 disabled. 20 C.F.R. §§ 404.1520(a)(4)(iv), 416.920(a)(4)(iv).
9 At this step, Plaintiff's residual functional capacity ("RFC")
10 assessment is considered. If Plaintiff cannot perform this work,
11 the fifth and final step in the process determines whether
12 Plaintiff is able to perform other work in the national economy in
13 view of Plaintiff's residual functional capacity, age, education
14 and past work experience. 20 C.F.R. §§ 404.1520(a)(4)(v),
15 416.920(a)(4)(v); *Bowen v. Yuckert*, 482 U.S. 137 (1987).

16 The initial burden of proof rests upon Plaintiff to establish
17 a *prima facie* case of entitlement to disability benefits.
18 *Rhinehart v. Finch*, 438 F.2d 920, 921 (9th Cir. 1971); *Meanel v.*
19 *Apfel*, 172 F.3d 1111, 1113 (9th Cir. 1999). The initial burden is
20 met once Plaintiff establishes that a physical or mental
21 impairment prevents the performance of previous work. The burden
22 then shifts, at step five, to the Commissioner to show that (1)
23 Plaintiff can perform other substantial gainful activity and (2) a
24 "significant number of jobs exist in the national economy" which
25 Plaintiff can perform. *Kail v. Heckler*, 722 F.2d 1496, 1498 (9th
26 Cir. 1984).

27 STANDARD OF REVIEW

28 Congress has provided a limited scope of judicial review of a

1 Commissioner's decision. 42 U.S.C. § 405(g). A Court must uphold
2 the Commissioner's decision, made through an ALJ, when the
3 determination is not based on legal error and is supported by
4 substantial evidence. See *Jones v. Heckler*, 760 F.2d 993, 995
5 (9th Cir. 1985); *Tackett v. Apfel*, 180 F.3d 1094, 1097 (9th Cir.
6 1999). "The [Commissioner's] determination that a plaintiff is
7 not disabled will be upheld if the findings of fact are supported
8 by substantial evidence." *Delgado v. Heckler*, 722 F.2d 570, 572
9 (9th Cir. 1983) (citing 42 U.S.C. § 405(g)). Substantial evidence
10 is more than a mere scintilla, *Sorenson v. Weinberger*, 514 F.2d
11 1112, 1119 n. 10 (9th Cir. 1975), but less than a preponderance.
12 *McAllister v. Sullivan*, 888 F.2d 599, 601-602 (9th Cir. 1989);
13 *Desrosiers v. Secretary of Health and Human Services*, 846 F.2d
14 573, 576 (9th Cir. 1988). Substantial evidence "means such
15 evidence as a reasonable mind might accept as adequate to support
16 a conclusion." *Richardson v. Perales*, 402 U.S. 389, 401 (1971)
17 (citations omitted). "[S]uch inferences and conclusions as the
18 [Commissioner] may reasonably draw from the evidence" will also be
19 upheld. *Mark v. Celebrezze*, 348 F.2d 289, 293 (9th Cir. 1965).
20 On review, the Court considers the record as a whole, not just the
21 evidence supporting the decision of the Commissioner. *Weetman v.*
22 *Sullivan*, 877 F.2d 20, 22 (9th Cir. 1989) (quoting *Kornock v.*
23 *Harris*, 648 F.2d 525, 526 (9th Cir. 1980)).

24 It is the role of the trier of fact, not this Court, to
25 resolve conflicts in evidence. *Richardson*, 402 U.S. at 400. If
26 evidence supports more than one rational interpretation, the Court
27 may not substitute its judgment for that of the Commissioner.
28 *Tackett*, 180 F.3d at 1097; *Allen v. Heckler*, 749 F.2d 577, 579

1 (9th Cir. 1984). Nevertheless, a decision supported by
2 substantial evidence will still be set aside if the proper legal
3 standards were not applied in weighing the evidence and making the
4 decision. *Browner v. Secretary of Health and Human Services*, 839
5 F.2d 432, 433 (9th Cir. 1987). Thus, if there is substantial
6 evidence to support the administrative findings, or if there is
7 conflicting evidence that will support a finding of either
8 disability or nondisability, the finding of the Commissioner is
9 conclusive. *Sprague v. Bowen*, 812 F.2d 1226, 1229-1230 (9th Cir.
10 1987).

11 **ALJ'S FINDINGS**

12 The ALJ found at the onset that plaintiff meets the
13 nondisability requirements and is insured for disability benefits
14 through December 31, 2003. (Tr. 19, 21.) The ALJ found at step
15 one that plaintiff has not engaged in substantial gainful activity
16 since her onset date. (Tr. 21.) At steps two and three, the ALJ
17 found that plaintiff suffers from diabetes mellitus, obesity,
18 peripheral neuropathy, and retinopathy, impairments that are
19 severe but which do not alone or combination meet or medically
20 equal a Listing impairment. He found plaintiff failed to
21 establish that she suffers from a severe mental impairment. (Tr.
22 21-22). At step four, relying on the VE's testimony, the ALJ
23 found plaintiff is able to perform her past relevant work as a
24 photo developer/processor. (Tr. 26-27.) Because he made this
25 determination at step four, the ALJ was not required to proceed to
26 step five. Accordingly, the ALJ found that plaintiff was not
27 disabled within the meaning of the Social Security Act. (Tr. 26-
28 27.)

ISSUES

Plaintiff contends that the Commissioner erred as a matter of law. Specifically, she argues that the ALJ erred by: (1) finding at step two that she does not suffer from a severe mental impairment; (2) assessing plaintiff's and lay witness testimony; and (3) failing to include all of her limitations in his hypothetical. (Ct. Rec. 13 at 8-11).

The Commissioner opposes the plaintiff's motion for summary judgment and asks that the ALJ's decision be affirmed. (Ct. Rec. 16 at 6).

DISCUSSION**A. Step Two Finding**

In social security proceedings, the claimant must prove the existence of a physical or mental impairment by providing medical evidence consisting of signs, symptoms, and laboratory findings; the claimant's own statement of symptoms alone will not suffice. 20 C.F.R. § 416.908. The effects of all symptoms must be evaluated on the basis of a medically determinable impairment which can be shown to be the cause of the symptoms. 20 C.F.R. § 416.929. Once medical evidence of an underlying impairment has been shown, medical findings are not required to support the alleged severity of symptoms. *Bunnell v. Sullivan*, 947, F. 2d 341, 345 (9th Cr. 1991).

An impairment or combination of impairments may be found "not severe only if the evidence establishes a slight abnormality that has no more than a minimal effect on an individual's ability to work." *Webb. Barnhart*, 433 F. 3d 683, 686-687 (9th Cir. 2005)(citing *Smolen v. Chater*, 80 F. 3d 1273, 1290 (9th Cir.

1996); see *Yuckert v. Bowen*, 841 F. 2d 303, 306 (9th Cir. 1988).
If an adjudicator is unable to determine clearly the effect of an
impairment or combination of impairments on the individual's
ability to do basic work activities, the sequential evaluation
should not end with the not severe evaluation step. S.S.R. No.
85-28 (1985). Step two, then, is "a de minimus screening device
[used] to dispose of groundless claims," *Smolen*, 80 F. 3d at 1290,
and an ALJ may find that a claimant lacks a medically severe
impairment or combination of impairments only when his conclusion
is "clearly established by medical evidence." S.S.R. 85-28. The
question on review is whether the ALJ had substantial evidence to
find that the medical evidence clearly established that the
claimant did not have a medically severe impairment or combination
of impairments. *Webb*, 433 F. 3d at 687; see also *Yuckert*, 841 F.
2d at 306.

Plaintiff contends that the ALJ's step two analysis of her
mental impairments is erroneous because she "had complaints of
psychological problems including the inability to handle stress.
In this case Plaintiff has presented records from her naturopath
and message therapist which supports [sic] her statements that she
has difficulty handling stress." (Ct. Rec. 13 at 9-10, citing Tr.
62; 72; 163-188; 95-272). Plaintiff contends that her inability
to tolerate stress has more than a minimal impact on her ability
to function. (Ct. Rec. 13 at 10). The Commissioner responds that
the ALJ correctly noted records show plaintiff's neck and back
pain were, at times, attributed to stress, but "there was very
little in the medical records concerning mental health issues."
(Ct. Rec. 16 at 11, citing Tr. 22). Significantly, the ALJ

1 observed there is no evidence that plaintiff ever sought mental
2 health treatment. He concluded that the record did not establish
3 that plaintiff's symptoms related to stress rose to the level of a
4 significant limitation on her ability to perform work-related
5 activities. (Tr. 22.)

6 The ALJ weighed the medical evidence. To aid him in this
7 process, the ALJ evaluated plaintiff's credibility. (Tr. 23-26.)
8 Credibility determinations bear on evaluations of medical evidence
9 when an ALJ is presented with conflicting medical opinions or
10 inconsistency between a claimant's subjective complaints and
11 diagnosed condition. See *Webb v. Barnhart*, 433 F. 3d 683, 688
12 (9th Cir. 2005).

13 It is the province of the ALJ to make credibility
14 determinations. *Andrews v. Shalala*, 53 F. 3d 1035, 1039 (9th Cir.
15 1995). However, the ALJ's findings must be supported by specific
16 cogent reasons. *Rashad v. Sullivan*, 903 F. 2d 1229, 1231 (9th
17 Cir. 1990). Once the claimant produces medical evidence of an
18 underlying medical impairment, the ALJ may not discredit testimony
19 as to the severity of an impairment because it is unsupported by
20 medical evidence. *Reddick v. Chater*, 157 F. 3d 715, 722 (9th Cir.
21 1998). Absent affirmative evidence of malingering, the ALJ's
22 reasons for rejecting the claimant's testimony must be "clear and
23 convincing." *Lester v. Chater*, 81 F. 3d 821, 834 (9th Cir. 1995).
24 "General findings are insufficient: rather the ALJ must identify
25 what testimony not credible and what evidence undermines the
26 claimant's complaints." *Lester*, 81 F. 3d at 834; *Dodrill v.*
27 *Shalala*, 12 F. 3d 915, 918 (9th Cir. 1993).

28 The ALJ relied on several factors when he assessed

1 plaintiff's credibility, including noting that objective evidence
2 does not support plaintiff's subjective complaints. (Tr. 25.) An
3 example relied on by the ALJ is plaintiff's testimony that her
4 blood sugars have averaged around 240, but there is no clinical
5 evidence to support this claim. In July of 2000, blood sugars
6 mostly ran between 103 and 140, with occasional high readings of
7 218. Two reports show readings over 270, in June of 2000 and mid-
8 August 2004; however, in early August 2004, plaintiff reported her
9 diabetes mellitus was well controlled with insulin and her blood
10 sugars were 140. (Tr. 25, referring to Exhibits 1F, 2F, 7F, 20F
11 and 27F.) The Appeals Council relied on additional evidence in
12 denying review: in a report dated March 29, 2007, plaintiff
13 indicated she did not have any problems with diabetes for the
14 prior six months.

15 A lack of supporting objective medical evidence is a factor
16 which may be considered in evaluating an individual's credibility,
17 provided it is not the sole factor. *Bunnell v. Sullivan*, 347 F.
18 2d 341, 345 (9th Cir. 1991). In this case the ALJ also relied on
19 (1) complaints of peripheral neuropathy in plaintiff's feet and
20 legs are inconsistent with testimony that she walks four miles
21 three times a week; (2) plaintiff's statements that she is unable
22 to work are inconsistent with testimony that she performs
23 volunteer work three days a week for three hours each day at the
24 local museum, in addition to her exercise schedule; (3) plaintiff
25 has not always followed through with treatment recommendations;
26 (4) a non-treating doctor refused to prepare disability ratings
27 for plaintiff and opined he would be surprised if she qualified
28 for benefits; and (5) no treating physician has opined that
plaintiff is unable to perform light work. (Tr. 23-26.)

1 With regard to daily activities, it is well-established that
2 the nature of daily activities may be considered when evaluating
3 credibility. *Fair*, 885 F. 2d at 603. The ALJ found that
4 plaintiff's schedule of exercise (a four mile walk three times a
5 week) and of work as a volunteer treasurer (three days a week for
6 three hours each day) demonstrates an activity level indicating
7 she should be capable of sustaining a work schedule. (Tr. 25.)

8 With respect to following treatment recommendations, the ALJ
9 noted that although plaintiff was advised to see a diabetic
10 educator, she declined "indicating that she knew everything about
11 the proper diet." (Tr. 25, citing Exhibit 2F/5.) He observed
12 that in July of 2000, plaintiff was not implementing the Bernstein
13 dietary program as instructed. She was noted to be "winging it" on
14 her own and had a tendency to eat too many carbohydrates. (*Id.*,
15 citing Exhibit 7F/7.) In March of 2005, the ALJ notes plaintiff's
16 report that her blood sugars were "very high, but she did not
17 care." (Tr. 25.) Before September of 2006, the ALJ points out,
18 plaintiff had not been seen at the clinic for about five months.
19 (*Id.*, citing Exhibit 7F/26.) In September of 2006 she was told to
20 go to her doctor's office for a diabetes follow-up. The record
21 does not show plaintiff appeared for follow-up. (*Id.*, citing
22 Exhibit 7F/27.)

23 Noncompliance with medical care or unexplained or
24 inadequately explained reasons for failing to seek medical
25 treatment cast doubt on a claimant's subjective complaints. 20
26 C.F.R. §§ 404.1530, 426.930; *Fair v. Bowen*, 885 F. 2d 597, 603
27 (9th Cir. 1989).

28 The ALJ is responsible for reviewing the evidence and
resolving conflicts or ambiguities in testimony. *Magallanes v.*

1 Bowen, 881 F. 2d 747, 751 (9th Cir. 1989). It is the role of the
2 trier of fact, not this court, to resolve conflicts in evidence.
3 Richardson, 402 U.S. at 400. The court has a limited role in
4 determining whether the ALJ's decision is supported by substantial
5 evidence and may not substitute its own judgment for that of the
6 ALJ, even if it might justifiably have reached a different result
7 upon de novo review. 42 U.S.C. § 405 (g).

8 The ALJ provided clear and convincing reasons for finding
9 plaintiff's allegations not fully credible, including
10 noncompliance with medical treatment and unexplained reasons for
11 failing to seek treatment, activities inconsistent with degree of
12 impairment alleged, and the lack of objective findings
13 substantiating subjective complaints.

14 With respect to his step-two analysis, the ALJ stated:

15 . . . the undersigned finds the claimant does not
16 have a severe mental health impairment. The claimant
17 alleged she does not handle stress well. There is
18 mention that the claimant's neck and back pain are due
19 to stress. However, there is very little in the
20 medical records concerning mental health issues and
21 there is no evidence that the claimant ever sought
22 treatment for mental health issues. While the
23 claimant might have some symptoms related to stress,
24 they do not rise to the level of a significant
25 limitation of her ability to perform work-related
26 activities.

27 (Tr. 22.)

28 The ALJ found that plaintiff failed to bring forth medical
evidence of the existence of a severe mental impairment.

The ALJ properly weighed the medical evidence. While there
is evidence suggesting plaintiff suffered back and neck pain on
occasion related to stress, no objective evidence of a severe
mental impairment is found in the record. The ALJ properly relied
on plaintiff's complete lack of treatment for mental health

1 issues, among other reasons, when he rejected her mental
2 impairment as non-severe at step two. The record does not include
3 medical evidence of problems caused by mental health issues, alone
4 or in combination, sufficient to pass the de minimus threshold of
5 step two. See *Smollen*, 80 F. 3d at 1290.

6 **B. Lay Witness Testimony**

7 The ALJ rejected lay testimony from plaintiff's friend and
8 co-volunteer:

9 Janet Thomas, the claimant's friend, testified that
10 they have known each other since high school and they
11 work at the museum together. They see each other often
12 at the museum and the claimant has volunteered there
13 since 2001. Ms. Thomas testified that the claimant's
14 physical condition causes her to have an irregular work
15 schedule. The claimant does not get along well with
16 others and board members and other volunteers complain
17 about the claimant because she is very volatile and has
18 an explosive personality. The claimant cannot cope with
19 stress or change. Ms. Thomas has not seen anyone, other
20 than a child, with less coping skills than the claimant.
21 She could not say whether the claimant has always had
22 these personality issues but she thinks that the claimant
23 has a lot of foot and hand pain and difficulty with her
24 eyes.

17 This testimony is given little weight in evaluating the
18 disability claim as it is based on the observations and
19 impressions of a lay person who has no medical training
20 or familiarity with the medical evidence. The witness
21 is not medically trained to make exacting observation
22 as to dates, frequencies, types and degrees of medical
23 signs and symptoms, or of the frequency or intensity of
24 unusual moods or mannerisms. Most importantly,
25 significant weight cannot be given to the witness'
26 testimony because it, like the claimant's testimony,
27 is not consistent with the preponderance of observations
28 by medical care providers.

24 (Tr. 26.)

25 The ALJ may not ignore or improperly reject the **probative**
26 testimony of a lay witness without giving reasons that are germane
27 to each witness. *Dodrill v. Shalala*, 12 F.3d 915, 919 (9th Cir.
28 1993) (emphasis added). The ALJ shall "consider observations by
non-medical sources as to how an impairment affects a claimant's

1 ability to work." *Sprague v. Bowen*, 812 F.2d 1226, 1232 (9th Cir.
2 1987), *citing* 20 C.F.R. § 404.1513(e)(2).

3 The ALJ rejected Ms. Thomas's lay testimony with germane
4 reasons supported by the evidence. Observations of treating
5 physicians include Edward Johnson, M.D. On January 7, 2003, Dr.
6 Johnson indicated plaintiff reported blood sugar levels between
7 140 and 160. He assessed her as a stable diabetic. (Tr. 137.)
8 Maja Zugec, M.D., who saw plaintiff on August 11, 2004, noted
9 plaintiff's medications are for hypothyroidism (a naturopathic
10 medication) and diabetes. (Tr. 125.) Dr. Zugec indicated
11 plaintiff reported no diarrhea or other symptoms and she "works as
12 a medical transcriptionist in Colville." (*Id.*) On October 11,
13 2204, Dr. Johnson noted plaintiff 'had some diarrhea but now it is
14 resolved. Also had hyperlipidemia and diabetes and does not see a
15 physician on a regular basis." (Tr. 142.) On March 8, 2005,
16 William Doyle, M.D., told plaintiff he would be very surprised if
17 she qualified for social security benefits. (Tr. 144.) On March
18 29, 2005, testing by K. Scott McDougall, O.D., revealed corrected
19 visual acuities of 20/20 in each eye. (Tr. 158.) Neuropathic
20 physician Randy Sandaine noted on April 13, 2006, plaintiff was
21 using an "ab machine" getting "a lot of abdominal work out." (Tr.
22 180.) On September 11, 2006, plaintiff listed her occupation as
23 "bookkeeper/medical transcriptionist" on a history questionnaire
24 for Empire Eye Physicians. (Tr. 190.)

25 The ALJ is correct that no medical evidence supports the lay
26 witness's assertions of limitation. Accordingly, the ALJ did not
27 err with regard to the weight he gave to the lay witness
28 testimony.

///

1 **C. Impairments included in Hypothetical**

2 Plaintiff alleges that the ALJ omitted limitations
3 established by the evidence, including the need for ready access
4 to a restroom and limitations caused by pain. She alleges these
5 omissions resulted in error at step five. (Ct. Rec. 13 at 11).
6 The Commissioner responds that the ALJ's RFC assessment is
7 supported by the medical record. (Ct. Rec. 16 at 12-13).

8 With respect to the need for ready access to a restroom, the
9 ALJ found plaintiff's symptoms of celiac disease (diarrhea) non-
10 severe. (Tr. 22.) He notes plaintiff first complained of
11 diarrhea symptoms in September of 2004, and in March of 2005,
12 plaintiff reported experiencing diarrhea each day for three to
13 four hours. (*Id.*, citing Exhibit 4F/8, 4F/16, and 7F/18.)

14 The ALJ found the record [from treating naturopath Randy
15 Sandine, N.D.] indicates the symptoms resolved after a change in
16 diet. (*Id.*, citing Exhibit 7F/20-21.) The record cited by the ALJ
17 states: "The patient reports that she has not had any diarrhea for
18 about three weeks. She reduced her dairy products and noticed
19 that the diarrhea went away." (Tr. 180.) Because this problem
20 resolved with a change of diet, the ALJ correctly excluded it as
21 an unsupported limitation.

22 With respect to pain, the ALJ's hypothetical included the
23 following: "the individual suffers from mild to moderate chronic
24 pain, which is of sufficient severity to be noticeable at all
25 times, but she would be able to remain attentive and responsive in
26 a work setting and could carry out normal work assignments
27 satisfactorily." (Tr. 333.) Plaintiff alleges that the ALJ's
28 flawed assessment of plaintiff's credibility caused him to
improperly discount her pain complaints. As noted, the ALJ's

1 credibility assessment is without legal error and fully supported
2 by the record. Contrary to plaintiff's argument, the ALJ included
3 all of the limitations established by the evidence in his
4 hypothetical.

5 The objective medical and other evidence fully supports the
6 ALJ's finding that plaintiff has the RFC to perform a significant
7 range of light work.

8 **CONCLUSION**

9 Having reviewed the record and the ALJ's conclusions, this
10 court finds that the ALJ's decision at step two that plaintiff
11 suffers from no severe mental impairment is correct. The court
12 finds that the remainder of the ALJ's decision is also free of
13 legal error and supported by substantial evidence.

14 **IT IS ORDERED:**

15 1. Defendant's Motion for Summary Judgment (**Ct. Rec. 15**) is
16 **GRANTED.**

17 2. Plaintiff's Motion for Summary Judgment (**Ct. Rec. 12**) is
18 **DENIED.**

19 The District Court Executive is directed to file this Order,
20 provide copies to counsel for Plaintiff and Defendant, enter
21 judgment in favor of Defendant, and **CLOSE** this file.

22 DATED this 4th day of August, 2008.

23 /s/ James P. Hutton

24 JAMES P. HUTTON
25 UNITED STATES MAGISTRATE JUDGE
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28